

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA

7
8 JAMES FLAVY COY BROWN,

2:13-CV-1039 JCM (PAL)

9 Plaintiff(s),

10 v.

11 SOUTHERN NEVADA ADULT
12 MENTAL HEALTH SERVICES,

13 Defendant(s).
14

15 ORDER

16 Presently before the court is the case of *Brown v. Rawson-Neal Psychiatric Hospital et al.*
17 (case no. 2:13-cv-01039-JCM-PAL).

18 **I. Analysis**

19 On February 13, 2014, the court ordered that plaintiff's constitutional and federal statutory
20 claims be dismissed without prejudice. (Doc. # 54). Due to the lack of an active federal claim, the
21 court declined to exercise jurisdiction over plaintiff's claims arising under Nevada law. *Id.*

22 On June 20, 2014, the court denied plaintiff's motion to reconsider the dismissal of the
23 constitutional and federal statutory claims. (Doc. # 61). In this order, the court specifically granted
24 leave for plaintiff to move to amend his complaint on or before July 7, 2014. *Id.* Plaintiff neither
25 attempted to file an amended complaint nor requested an extension of time to do so prior to this
26 deadline.

27 ...
28

1 On July 8, 2014, citing its “strong preference for adjudicating claims on their merits rather
 2 than procedural technicalities,” the court granted plaintiff an additional seven days to amend his
 3 complaint. (Doc. # 62). At that time, the court “admonishe[d] plaintiff that failure to file an amended
 4 complaint within this time may result in dismissal of his constitutional and federal statutory claims
 5 with prejudice.” *Id.* Again, plaintiff failed to file an amended complaint or to request an extension
 6 of time to do so.

7 In its dismissal order, the court identified several areas in which plaintiff failed to put forward
 8 sufficient factual allegations to support his federal claims for relief. Despite the court’s granting
 9 multiple opportunities for plaintiff to support his narrative with sufficient detail to establish a valid
 10 claim under the Constitution or laws of the United States, plaintiff has failed to take any action
 11 whatsoever in this case.

12 The court is at a loss in cases, such as this one, in which a plaintiff does not participate in the
 13 judicial process, fails to pursue his claims or even request an extension. However, the court has an
 14 obligation to promote justice by allocating judicial resources to cases with ongoing disputes and
 15 active parties.

16 Federal Rule of Civil Procedure 41(b) allows for the dismissal of an action based on a party’s
 17 failure to obey an order of the court.¹ The Ninth Circuit has specifically held that this rule may be
 18 applied when a plaintiff fails to file an amended complaint prior to a court-ordered deadline. *See,*
 19 *e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992).

20 “In determining whether to dismiss a case for failure to comply with a court order the district
 21 court must weigh five factors including: (1) the public’s interest in expeditious resolution of
 22 litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4)
 23 the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic
 24 alternatives.” *Id.* at 1260-61 (internal quotations omitted); *see also Thompson v. Housing Auth. of*
 25 *City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986); *Henderson v. Duncan*, 779 F.2d 1421, 1423

26
 27 ¹ Though rule 41(b) refers to a defendant’s motion for dismissal, the Supreme Court has long held that district
 28 courts have the power to dismiss actions *sua sponte* based on a plaintiff’s failure to comply with a court order. *See, e.g.,*
Link v. Wabash R. Co., 370 U.S. 626, 630-31 (1962).

(9th Cir. 1986). The court will consider each of these factors in turn.

1. The Public Interest

The Ninth Circuit has consistently held that “the public’s interest in expeditious resolution of litigation always favors dismissal.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (quoting *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)). In this case, plaintiff has not only failed to file an amended complaint prior to the court’s explicit deadlines, but has also failed to request an extension or explain his failure to the court. Therefore, this factor weighs in favor of dismissal.

2. The Court’s Need to Manage its Docket

The delays caused by plaintiff’s failures to amend his complaint have already consumed time and resources that the court could have devoted to other cases. The court’s resources are best allocated to actions with active parties seeking to resolve their claims under the law. Thus, this factor also weighs in favor of dismissal.

3. Risk of Prejudice to Defendants

The Ninth Circuit recognizes that the risk of prejudice must be considered in reference to “the plaintiff’s reason for defaulting.” *Pagtalunan*, 291 F.3d at 642. However in this matter, plaintiff has not offered any explanation for his failure to comply with the court’s orders.

In its dismissal order, the court clearly identified numerous deficiencies in plaintiff’s complaint that he could attempt to correct in an amended version. Rather than simply revise and supplement his complaint to correct these deficiencies, plaintiff has taken no action in this case.

“Unnecessary delay inherently increases the risk that witnesses’ memories will fade and evidence will become stale.” *Id.* at 643. Considering plaintiff’s ongoing failure to file an amended complaint without offering an explanation, the court finds that the delay in this matter is unreasonable, and therefore this factor weighs in favor of dismissal.

4. Public Policy Favoring Disposition on the Merits

Public policy and the preference of this court hold that claims should be resolved on their merits whenever possible. This factor weighs against dismissal.

1 5. *Availability of Less Drastic Alternatives*

2 In an attempt to avoid dismissal, the court, *sua sponte*, granted plaintiff a seven-day extension
 3 in which to file an amended complaint with an express warning that failure to file prior to this
 4 deadline could result in dismissal of his constitutional and federal statutory claims with prejudice.
 5 In addition, seven days have elapsed since this deadline passed, in which time plaintiff could have
 6 requested an extension or otherwise clarified his position to the court. Despite the court's
 7 admonishment, plaintiff has not filed an amended complaint or taken any other action in this matter.
 8 Therefore the court has exercised less drastic alternatives without success, and this factor weighs in
 9 favor of dismissal.

10 **II. Conclusion**

11 As four of the *Ferdik* factors weigh in favor of dismissal, the court will dismiss plaintiff's
 12 constitutional and federal statutory claims with prejudice.

13 Because the court is entering judgment on all the claims over which it has original
 14 jurisdiction, the court will dismiss all of plaintiff's claims arising under Nevada law without
 15 prejudice. *See* 28 U.S.C. 1367(c)(3). These claims remain extant to be adjudicated by an appropriate
 16 forum.

17 Accordingly,

18 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's constitutional
 19 and federal statutory claims (claims 1-7), be, and the same hereby are, DISMISSED with prejudice.

20 IT IS FURTHER ORDERED that plaintiff's claims arising under Nevada law (claims 8-12)
 21 are DISMISSED without prejudice. The clerk is instructed to enter judgment accordingly and close
 22 the case.

23 DATED July 24, 2014.

24
 25 
 26 UNITED STATES DISTRICT JUDGE